ship between the creditors and directors; *Marshall* v. *F. & M. Sav. Bank,* 85 Va. 676, 8 S. E. 586, 17 Am. St. Rep. 84, 2 WILGUS CORP. CAS. 1879, *Delano* v. *Case,* 121 Ill. 247, 2 Am. St. Rep. 81, affirming 17 Ill. App. 531; *Foster* v. *Bank,* 88 Fed. 604, 607; *Bank* v. *Bossieux,* 3 Fed. 817; *Solomon* v. *Bates,* 118 N. C. 287, 59 Am. St. Rep. 725, 24 S. E. 478. Under circumstances similar to those in the principal case, the directors were held liable to a depositor in *Cassidy* v. *Uhlmann,* 170 N. Y. 505, 63 N. E. 554, where the court overruled the defense that the act of keeping the doors open after known insolvency was not the act of the individual directors, holding that the directors should, as a last resort, make public announcement of the insolvency, which is in direct conflict with the statement of ENGERUD, J., in the case under discussion that the defendant "owed no legal duty to personally denounce the bank." See also *Solomon,* v. *Bates,* supra, *Delano* v. *Case,* supra, *Baxter* v. *Coughlin,* 70 Minn. I, 72 N. W. 797; *Seale* v. *Baker,* 70 Tex. 283, 7 S. W. 742, 8 Am. St. Rep. 592; contra, *Minton* v. *Stahlman,* 96 Tenn. 98; *Duffy* v. *Byrne,* 7 Mo. App. 417. The distinction must be noted between actions to enforce a liability for injuries to corporate assets, which must be brought directly by the corporation or another for it, and actions to enforce a liability for injuries resulting directly to strangers without affecting the corporate property at all; i. e. torts on third parties. Most of the cases cited in the principal case to support the decision belong to the former class, whereas the ground of recovery, so far as deceit was relied on, was based on a tort directly upon the plaintiff. See *Salmon* v. *Richardson,* 30 Conn. 360, 79 Am. Dec. 255; *Cross* v. *Sackett,* 2 BOSWORTH (N. Y.) 645; *Houston* v. *Thornton,* 122 N. C. 365.

CORPORATIONS—ISSUE OF CONVERTIBLE BONDS—INCREASE OF CAPITAL STOCK —PREEMPTIVE RIGHT OF STOCKHOLDERS.—The directors of the defendant company entered into an agreement with another corporation to issue to the latter, for services to be rendered, a certain amount of bonds convertible into stock, at the option of the holders, at any time within five years. Complainant, a stockholder in the defendent corporation, sues to restrain the issuance of the bonds on the ground that the proposed action will deprive him of the right to participate in the issue of new stock, which the conversion of the bonds will necessitate, to an extent measured by the comparative amount of his present holdings, and upon the same terms that other parties participate therein. *Held,* that the complainant is entitled to the relief sought. *Wall* v. *Utah Copper Co. et al.* (1905), — N. J. Eq. —, 62 Atl. Rep. 533.

It is well settled that where a corporation increases its capital stock each of the old shareholders has a prior right to subscribe for the proportionate amount of the new stock, according to his holdings of the old. *Dousman* v. *Smelting Co.,* 40 Wis. 418; 2 WILGUS CORP. CAS. 1703; *Real Estate Trust Co.* v. *Bird,* 90 Md. 229, 44 Atl. 1048; *Hammond* v. *Edison Illuminating Co.,* 131 Mich 79, 90 N. W. 1040. But if outside parties offer bona fide to take the new issue at a premium, this preemptive right does not exist unless the shareholder is also willing to pay the offered price. *Stokes* v. *Continental Trust Co.,* 99 App. Div. 377, 91 N. Y. Supp. 239. Where the increase is for the purpose of raising additional funds, the prior right of the

old stockholders exists, that they may prevent any impairment of their interest and influence in the corporation, or change in the relative value of their holdings. *Gray* v. *Portland Bank,* 3 Mass. 364, 3 Am. Dec. 156; *Humboldt Driving Park Ass'n.* v. *Stevens,* 34 Neb. 528, 33 Am. St. Rep. 654; *Jones* v. *Concord and Montreal R. Co.,* 67 N. H. 119, 130, 38 Atl. 120, 68 Am. St. Rep. 650; *Electric Co. of America* v. *Edison Electric Illuminating Co.,* 200 Pa. St. 516, 50 Atl. 164. But where the new issue is a mere stock dividend, the entire stock as then increased represents no more capital than the original shares had done, and the new shares are not owned by the corporation, but as soon as created, become the individual property of the owners of the old shares, in proportion to their holdings. *Gibbons* v. *Mahon,* 4 Mackey (D. C.) 130, 136, s. c. 136 U. S. 549; *Knapp* v. *Publishers George Knapp & Co.,* 127 Mo. 53, 72, 29 S. W. 885. This right is a benefit or interest which attaches to the stock as inherent in the shares in their very creation. *Atkins* v. *Albree et al.,* 94 Mass. 359, 361; but is limited to an increase of stock and does not extend to shares bought in by the corporation and held as assets by it. *State* v. *Smith,* 48 Vt. 266; *Crosby* v. *Stratton,* 17 Col. App. 212, 68 Pac. 130. In the principal case, as the issuance of the convertible bonds would deprive the complainant of his prior right in the new issue of stock, the action of the directors being violative of this was properly enjoined. Such bonds, however, are common at the present day, being issued under statutory authority. See *Chaffee* v. *Middlesex R. R. Co.,* 146 Mass. 224, 16 N. E. 34. In *Belmont* v. *Erie Ry. Co.,* 52 Barb. (N. Y.) 637, the right to issue such bonds was sustained, but the only attack on their validity there was that such an issue would increase the amount of capital stock beyond that fixed by the charter, the power to issue the bonds having been granted by statute, Cf. *Wood* v. *Whelen,* 93 Ill. 153, 164. However, even though the option cannot be enforced, the bonds are valid. *Wood* v. *Whelen,* supra. The validity of convertible bonds was assumed in *Target et al.* v. *Northern Central Ry. Co.,* 29 Md. 557; *Sturges* v. *Stetson,* 1 Bissel 246, 23 Fed Cas. No. 13568; *Sutliff* v. *Cleveland & Mahoning R. Co.,* 24 Ohio St. 147; *Denny et al* v. *Cleveland & Pitts. R. Co.,* 28 Ohio St. 108; *Muhlenberg* v. *Philadelphia & Reading R. Co.,* 47 Pa. St 16.

COVENANTS—TECHNICAL AND SUBSTANTIAL BREACH.—A sold land to B with a covenant of warranty to cut and remove timber and B conveyed to C with a similar warranty. A, however, had made prior sale of the timber to D. C went on the land and cut a portion of the timber, whereupon D brought an action against him and recovered damages. A brought foreclosure proceeding on the purchase money mortgage to which B and C were made parties. They set up the judgment of D by way of counter-claim. *Held,* that this could not be done since the covenant was broken as soon as made and the breach would not run with the land. *Turner et al.* v. *Lawson* (1905), — Ala. —, 39 So. Rep. 755.

As a general proposition a breach of a covenant does not run with the land. *Ladd* v. *Noyes,* 137 Mass. 151; *Provident Co.* v. *Fiss,* 147 Pa. St. 232; *Clement* v. *Bank,* 61 Vt. 298; *Mygatt* v. *Coe,* 124 N. Y. 212; *Wesco* v. *Kern,* 36 Ore. 433. A few of the United States, however, follow the English doc-